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13 Americas, as Trustee for Dover Mortgage  
14 Capital Corporation Grantor Trust Certificate  
15 Series 2004-A*

16 **UNITED STATES DISTRICT COURT**  
17 **DISTRICT OF NEVADA**

18 DEUTSCHE BANK TRUST COMPANY  
19 AMERICAS, AS TRUSTEE FOR DOVER  
20 MORTGAGE CAPITAL CORPORATION  
21 GRANTOR TRUST CERTIFICATE SERIES  
22 2004-A,

23 Plaintiff,

24 vs.  
25 LOS PRADOS COMMUNITY ASSOCIATION,  
26 INC.; SATICOY BAY LLC SERIES 5105  
27 KINGSBRIDGE DRIVE; and NEVADA  
28 ASSOCIATION SERVICES, INC.,

29 Defendants.

30 SATICOY BAY LLC SERIES 5105  
31 KINGSBRIDGE DRIVE,

32 Counterclaimant,

33 vs.  
34 DEUTSCHE BANK TRUST COMPANY  
35 AMERICAS, AS TRUSTEE FOR DOVER  
36 MORTGAGE CAPITAL CORPORATION  
37 GRANTOR TRUST CERTIFICATE SERIES  
38 2004-A.,

39 Counter-defendant.

40 Case No.: 2:16-cv-580-RFB-PAL

41 **STIPULATION AND ORDER TO STAY  
42 LITIGATION PENDING FINAL  
43 RESOLUTION OF PETITION(S) FOR  
44 WRIT OF CERTIORARI TO THE  
45 UNITED STATES SUPREME COURT**

1 Plaintiff and counter-defendant Deutsche Bank Trust Company Americas, as Trustee for Dover  
 2 Mortgage Capital Corporation Grantor Trust Certificate Series 2004-A (**Deutsche Bank**), defendant  
 3 Los Prados Community Association, Inc., defendant and counter-claimant Saticoy Bay LLC Series  
 4 5105 Kingsbridge Drive (**Saticoy Bay**), and defendant Nevada Association Services, Inc. stipulate as  
 5 follows:

6 1. This action involves the parties seeking quiet title/declaratory relief and other claims  
 7 related to a non-judicial homeowner's association foreclosure sale conducted pursuant to NRS chapter  
 8 116.

9 2. On August 12, 2016, the Ninth Circuit held, in *Bourne Valley*, Nevada's "opt-in" notice  
 10 scheme for homeowners' association super-priority foreclosure is facially unconstitutional under the  
 11 Fourteenth Amendment's due process clause. *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*,  
 12 832 F.3d at 1159-60.

13 3. This Court issued an order staying this case pending the Ninth Circuit's mandate on  
 14 August 30, 2016, to "avoid potentially unnecessary further litigation." ECF No. 23 at 1. The order  
 15 directs any party may move to lift the stay when the Ninth Circuit issues its mandate. *Id.* at 3.

16 4. The Ninth Circuit issued its mandate on December 14, 2016. *Bourne Valley*, Ninth  
 17 Circuit Case No. 15-15233.

18 5. On January 26, 2017, the Nevada Supreme Court issued its decision in *Saticoy Bay*  
 19 *LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., a Div. of Wells Fargo Bank, N.A.*, 133  
 20 Nev. Adv. Op. 5, \_\_\_ P.3d \_\_\_, 2017 WL 398426 (Nev. Jan. 26, 2017) holding, in direct contradiction  
 21 to *Bourne Valley*, no state action supported a challenge under the due process clause.

22 6. Bourne Valley intends to file a petition for writ of certiorari in *Bourne Valley*. Its  
 23 current deadline is April 3, 2017. *See Bourne Valley*, U.S. Supreme Court Docket No. 16A753.  
 24 Wells Fargo's deadline to file its petition for writ of certiorari in *Saticoy Bay* is April 25, 2017. Thus,  
 25 the parties believe the stay the parties request is appropriate.

26 7. On February 8, 2017, the Nevada Supreme Court stayed the issuance of remittitur in  
 27 *Saticoy Bay* pending the filing of a writ of certiorari with the United States Supreme Court and, if a  
 28

1 petition is filed, the stay of remittitur will stay in effect until final disposition of the certiorari  
 2 proceedings before the United States Supreme Court.

3       8. Since then, several judges in this district have stayed similar cases pending the  
 4 exhaustion of all appeals before the United States Supreme Court. *See e.g., Nationstar Mortg. LLC v.*  
 5 *Green Valley S. Owners Ass'n*, No. 2:16-cv-00883-GMN-GWF, ECF No. 38 (D. Nev. Oct. 5, 2016);  
 6 *Bank of America, N.A. v. Canyon Willow Trop Owners' Ass'n*, No. 2:16-cv-01327-GMN-VCF, ECF  
 7 No. 25 (D. Nev. Oct. 26, 2016); *Deutsche Bank Nat'l Tr. Co. v. Copper Sands HOA*, No. 2:16-cv-  
 8 00763-JAD-CWH, ECF No. 29 (D. Nev. Feb. 28, 2017).

9       9. To determine if a stay is appropriate, the Court must consider (1) the possible damage  
 10 which may result from the stay, (2) any hardship or inequity which may result from the stay, and (3)  
 11 the orderly course of justice measured in terms of simplifying or complicating the issues, proof, and  
 12 questions of law. *Dependable Hwy. Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir.  
 13 2007). Here, the factors support a stay of litigation:

14       a.       Damage from Stay: Any damage from a temporary stay in this case will be minimal if  
 15 balanced against the potential fees, costs, and time which would surely ensue in this matter if litigation  
 16 were allowed to continue that could be mooted by a decision in *Bourne Valley* certiorari proceedings.  
 17 Indeed, the parties will be enable to avoid the cost and expense of continued legal proceedings in light  
 18 of what is unsettled law to say the least. Moreover, the Court will be relieved of expending further  
 19 time and effort until the conflict between the circuit and Nevada Supreme Court is resolved. Thus, a  
 20 stay will benefit all parties involved herein.

21       b.       Hardship or Inequity: There will be no significant hardship or inequity that befalls one  
 22 party more than the other. This relatively equal balance of equities results from the need for all parties  
 23 to have finality, given the split in the state and federal court decisions. The parties agree that any  
 24 hardship or inequity falling on any of them is outweighed by the benefits of a stay.

25       c.       Orderly Course of Justice: At the center of this case is a homeowners' association's  
 26 foreclosure sale under NRS 116. The outcome of the petitions for writ in *Bourne Valley* and/or  
 27 *Saticoy Bay* have the potential to affirm or overturn either case. Without a stay, the parties will

1 expend resources that will be unnecessary if either or both petitions are granted. A stay would also  
2 avoid a likely appeal from any subsequent judgment in this case. A temporary stay would  
3 substantially promote the orderly course of justice in this case. A stay will avoid the moving forward  
4 without final resolution of the federal issues and the state court/federal court conflict.

5 10. The parties agree that all proceedings in the instant case, including motion and other  
6 litigation deadlines, are stayed pending final resolution of the *Bourne Valley* and/or *Saticoy Bay*  
7 certiorari proceedings before the United States Supreme Court.

8 11. If this stipulation is approved, Deutsche Bank's motion to partially lift stay, ECF No.  
9 24, shall be deemed withdrawn.

10 12. Saticoy Bay shall be required to keep current on all property taxes and assessments,  
11 HOA dues, maintain the property, and maintain insurance on the property at issue.

12 13. Deutsche Bank shall be prohibited from selling or encumbering the property unless  
otherwise ordered by the Court.

14 14. Deutsche Bank is prohibited from conducting foreclosure proceedings on the property  
unless otherwise ordered by the Court.

16 15. The parties agree that all proceedings in the instant case, including motion and other  
17 litigation deadlines, are stayed pending final resolution of the *Bourne Valley* and/or *Saticoy Bay*  
18 certiorari proceedings before the United States Supreme Court.

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1 16. Any party may file a written motion to lift stay at any time it deems appropriate.

2 Dated this 21st day of March, 2017.

3 **AKERMAN LLP**

5 */s/ Tenesa S. Scaturro, Esq.*  
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13 Deutsche Bank Trust Company Americas, as  
14 Trustee for Dover Mortgage Capital  
15 Corporation Grantor Trust Certificate Series  
16 2004-A*

17 Dated this 21st day of March, 2017.

18 **ALVERSON, TAYLOR, MORTENSEN &  
19 SANDERS**

20 */s/ David J. Rothenberg, Esq.\**  
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27 *Attorneys for defendant Los Prados Community  
28 Association, Inc.*

\*E-signature affixed by Akerman LLP; approved by  
counsel via email

Dated this 13th day of March, 2017.

**LAW OFFICES OF MICHAEL F. BOHN,  
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Dated this 21st day of March, 2017.

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*Attorneys for defendant Nevada Association  
Services, Inc.*

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counsel via email

IT IS SO ORDERED:



RICHARD F. BOULWARE, II  
United States District Judge  
DATED this 23rd day of March, 2017.

**CERTIFICATE OF SERVICE**

I certify on the 21st day of March, 2017, and pursuant to Federal Rule of Civil Procedure 5, I filed and served a true and correct copy of the foregoing **STIPULATION AND ORDER TO STAY LITIGATION PENDING FINAL RESOLUTION OF PETITION(S) FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT** via the Court's CM/ECF system on the following:

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/s/ *Nick Mangels*

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